In the High Court of Punjab and Haryana at Chandigarh

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C.W.P. No.2845 of 2006

**.....**

Date of decision: 12.12.2006

Jagdish Chander

.....Petitioner

v.

Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and another

.....Respondents

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Coram: Hon'ble Mr. Justice S.S. Nijjar
Hon'ble Mr. Justice S.S. Saron

Present: Mr. Naveen Daryal, Advocate for the petitioner.

None for the respondents.

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The petitioner by way of the present writ petition seeks quashing of the award dated 21.10.2005 (Annexure-P.1) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court (respondent No.1).

The petitioner joined M/s Air Cell Digilink India Ltd., Karnal (respondent No.2) on daily wage basis. He was working as Jeep Driver since 10.12.1996 on a monthly salary of Rs.2,000/-. His services were dispensed with without giving any notice or notice regarding pay or retrenchment compensation even though he had completed 240 days in a

calendar year. It is alleged that the termination of services of the petitioner on 2.9.1997 by respondent No.2 is in violation of the various provisions of the Industrial Disputes Act, 1947 (`Act' – for short) including Section 25-F. The petitioner submitted a demand notice against his retrenchment which was referred by the Government to respondent No.1 Labour Court for adjudication under Section 10(1)(c) of the Act. The respondent No.1, in terms of its award dated 21.10.2005 (Annexure-P.1), held that the petitioner had failed to discharge the onus to prove that he has continuously worked for 240 days in a calendar year preceding the date of his termination on 2.9.1997. Accordingly, the reference was answered against the petitioner and in favour of respondent No.2. The said award is assailed in the present petition.

Written statement has been filed by respondent No.2. It is submitted that the petitioner has failed to establish the relationship of employee and employer between the petitioner and respondent No.2-Company. In the absence of said relationship, the present petition is not maintainable. At the relevant time the petitioner in fact had been working with M/s Industrial Security Detection and Placement Services and had left the service on 2.9.1997 on his own after receiving full and final payment. The receipt of full and final payment has been issued in favour of M/s Industrial Security Detection and Placement Services by the petitioner. As such, it cannot be said that he was in employment of two companies at the same time. It is submitted that the respondent No.2-Company, along with its reply i.e. the reply before the Labour Court, annexed the receipt dated 17.9.1997 (Ex.R.1) which shows that the petitioner had received a sum of Rs.4994/- from the above said M/s Industrial Security Detection and

Placement Services. The same gives the details to the effect that the petitioner had been paid a sum of Rs.2000/- for the month of August 1997, Rs.1600/- as extra wages for August 1997, Rs.1000/- as TA/DA for August 1997, Rs.134/- as wages for two days for the month of September 1997 and Rs.80/- as extra wages for September 1997. The said receipt has been signed by the petitioner and the execution of the same by the petitioner has not been denied by him. Thus, it is stated that the respondent No.2 Company could not have produced better evidence than the one which has been acknowledged by the petitioner. It is further stated that the stand of the respondent No.2 Company from the very beginning has been that the petitioner had never worked with it.

Learned counsel for the petitioner has submitted that the respondent no.2 Company did not produce the relevant record or documents before the Labour Court relating to the petitioner. In fact, the petitioner submitted an application dated 13.8.1999 (Annexure-P.2) for the production of record. The petitioner had prayed for production of the log book for the period from 10.12.1996 to 2.9.1997. Reply (Annexure-P.3) was filed by respondent no.2 Company in which it was stated that the log book mentioned in the application was lost somewhere and a police report had been lodged in this regard, a copy of which was attached. It is submitted that since respondent No.2 Company failed to produce any evidence that the petitioner was not their workman but had been working with M/s Industrial Security Detection and Placement Services, it was for respondent no.2 Company to lead evidence in this regard. The plea that the petitioner had abandoned the job without producing any material in this regard, it is contended, was not liable to be taken into account by the Labour Court.

The stand of respondent No.2 Company has been that the petitioner never worked with it and, therefore, no question of production of any record arises. The petitioner had been working with M/s Industrial Security Detection and Placement Services and had left the job on his own after receiving full and final payment. Reliance has been placed on the receipt dated 17.9.1997 (Ex.R.1) which shows that the petitioner had received the necessary wages and apart from the receipt, no better evidence could be led.

We have given our thoughtful consideration to the matter.

The case set up by the petitioner is that he has worked as a Jeep Driver with respondent No.2 Company for the period from 10.12.1996 to 2.9.1997 when his services were illegally terminated by the respondent No.2 Company in violation of the provisions of Section 25-F of the Act. During service, the petitioner was being paid Rs.2,000/- p.m. as salary. The respondent No.2 Company has denied that the petitioner was its employee. In fact, there exists no relationship of employee and employer between the parties. It is submitted by respondent No.2-Company that the petitioner was working with M/s Industrial Security Detection and Placement Services and he had left the job on his own after receiving full and final payment on 2.9.1997. The Labour Court (respondent No.1) held that when relationship is denied, it is for the workman to prove not only the relationship of employee and employer between the parties but also that he has worked for 240 days in the last calendar year preceding the date of his termination on 2.9.1997. In support of his case, the petitioner only examined himself as WW-1. In his deposition, he stated that he worked as a Driver with respondent No.2 from 10.12.1996 on a monthly salary of Rs.2,000/-. It is

further stated that junior to him, namely, Raghbir Singh was still working with respondent No.2 Company. It may be noticed that the petitioner had failed to produce any documentary evidence to corroborate his statement that he had worked with the respondent No.2-Company and that too for 240 days in a calendar year preceding his retrenchment. The petitioner has not produced his wages slip, any order, attendance register, P.F. slip and E.S.I. slip etc. to prove continuous service for 240 days with respondent No.2 Company. It is for the claimant-workman to show by leading evidence that he had indeed worked for 240 days in the year preceding his retrenchment from service. In Rajasthan State Ganganagar S. Mills Limited v. State of Rajasthan and another, (2004) 8 SCC 161, it was held that it was for the claimant-workman to show that he had worked for 240 days in the year preceding his termination. A mere statement in this regard on the part of the workman cannot be regarded as sufficient evidence. No proof of receipt of salary or wages for 240 days or an order or record in that regard had been produced. It was held that mere non-production of muster roll for the particular part of the period concerned is not sufficient to hold that the workman had worked for 240 days as claimed. In Surendranagar District Panchayat v. Jethabhai Pitamberbhai, (2005) 8 SCC 450 it was held that onus to prove requirement of 240 days continuous service lies on the workman. It is for the workman to adduce evidence apart from examining himself to prove the said factum. Such evidence may be in the form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year (attendance register, muster roll) to show that he has worked with the employer for 240 days. In Surendranagar District Panchayat v. Dahyabhai Amarsinh, (2005) 8 SCC 750, the Courts had

drawn an adverse inference on account of the failure of the employer to supply records called for by the Court in proceedings under the Act. It was held by the Supreme Court that the Courts had wrongly drawn an adverse inference. The scope of inquiry before the Labour Court was confined to only 12 months preceding the date of termination to decide the question of continuation of service for the purpose of Section 25-F of the Act. It was held that the facts must be proved by the workman to claim protection under Section 25-F and facts to claim the said protection are that (i) there exists relationship of employer and employee; (ii) he is a workman under Section 2(s); (iii) establishment in which he is employed is an "industry" within the meaning of the Act and (iv) he has put in not less than one year of continuous service as defined in Section 25-B under the employer. These conditions are cumulative and if anyone of them is missing then Section 25-F will not be attracted. To get relief from the Court the workman has to establish that he has a right to continue in service and that his service has been terminated without complying with the provisions of Section 25-F.

In the present case, the relationship of employee and employer between the petitioner and respondent No.2-Company has not been proved. Besides, the petitioner has failed to prove that he has been in continuous service for 240 days in the preceding one year prior to his alleged retrenchment. In the circumstances, the mere failure on the part of respondent No.2-Company not to produce the log book of the Jeep of which the petitioner alleges to be the driver would not require the drawing of an adverse inference in the absence of any other material like salary slip, wages, record of his appointment or engagement for the year, attendance register etc. to show that he has worked for 240 days. In fact, it has been

shown by respondent No.2 Company that the petitioner had vide receipt dated 17.9.1997 (Ex.R.1) received a sum of Rs.4,994/- from M/s Industrial Security Detection and Placement Service. The petitioner admitted the correctness of the said receipt (Ex.R.1). The same showed that the wages for the month of August 1997 of Rs.2,000/-, extra wages for August 1997 of Rs.1600/-, TA/DA for August 1997 of Rs.1,000/-, wages for two days in September 1997 of Rs.134/- and extra wages for September 1997 of Rs.80/- had been paid to the petitioner who in token of receipt had put his signatures on the said receipt. The said findings having been reached at on appreciation of evidence by the Labour Court would not call for any interference in exercise of the supervisory writ jurisdiction of this Court under Articles 226/227 of the Constitution of India especially when the same are not in any manner shown to be perverse or irrational.

In the circumstances, there is no merit in this petition and the same is accordingly dismissed.

**(S.S. Nijjar)**
**Judge**

December 12, 2006. **(S.S. Saron)**
**Judge**

ASR/*hsp*

Whether fit for indexing: Yes